

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authority to Revise its Gas Rates and Tariffs
to be Effective January 1, 2001.

(U 39 G)

Application 00-04-002
(Filed April 3, 2000)

**OPINION AWARDED INTERVENOR COMPENSATION TO TURN
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 01-11-001**

This decision grants The Utility Reform Network (TURN) intervenor compensation in the amount of \$23,399.22, as adjusted by the Commission, for its substantial contribution to Decision (D.) 01-11-001. TURN's request is unopposed, and TURN has properly documented its request for compensation for all hours claimed by its attorneys and for other, miscellaneous costs.

1. Background

On April 3, 2000, Pacific Gas and Electric Company (PG&E) filed its Biennial Cost Allocation Proceeding (BCAP) application, which requested Commission authorization to adopt new forecast period costs and balancing account balances, to adopt a new gas demand forecast, to allocate its gas revenue requirement among customer classes, and to set rates to recover the revenue requirement for the two-year BCAP period. The application proposed an effective date of January 1, 2001.

TURN filed a protest to the application on May 5, 2000. A number of other parties also filed protests and participated in the proceeding.¹ PG&E convened two settlement conferences, which were attended by the active parties. After negotiations, the parties resolved all of the issues in this proceeding and presented a settlement agreement to the Commission for approval. The Commission approved the settlement agreement in D.01-11-001.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.² Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.³ It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures

¹ These parties included: California Cogeneration Council, California Industrial Group and California Manufacturers and Technology Association, Department of General Services, Northern California Generation Coalition, Southern Energy California, L.L.C., and the Commission's Office of Ratepayer Advocates (ORA).

² All statutory citations are to the Public Utilities Code.

³ To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. In today's decision, "customer" and "intervenor" are used interchangeably.

and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

After review of the NOI filed by TURN in this proceeding, the assigned administrative law judge (ALJ) found TURN eligible to file for intervenor compensation by ruling dated July 3, 2000.

4. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.01-11-001 was adopted by the Commission on November 8, 2001, but was not mailed until November 9, 2001. Sixty days thereafter is January 8,

2002, and TURN filed its request on this date. TURN's request for an award of compensation is timely.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁵ Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.⁶

Here, TURN is entitled to intervenor compensation because it made a substantial contribution to D.01-11-001. TURN, along with ORA, filed testimony that proposed alternatives to PG&E's filed positions on customer marginal costs,

⁴ Section 1802(h).

⁵ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved). See also, D.89-09-103, Order modifying D.89-03-063. (In certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include 1) an extraordinarily complex proceeding, and 2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

⁶ See D.98-04-0590, *mimeo.* at 41.

economic factors and the resulting marginal cost revenues. Instead of settling the individual issues, the parties agreed to a total marginal cost revenue and allocation. The settlement agreement resolves all issues regarding marginal capacity and customer costs at a point that moves 65% from the marginal cost revenues calculated using PG&E's position towards the marginal cost revenues as initially proposed by TURN and ORA.

TURN also made contributions on rate design issues. For example, PG&E originally proposed a tier differential of 35% based on transportation rates only. TURN proposed an 83% transportation tier differential, designed to yield a 35% bundled tier differential. The settlement agreement adopted a tier differential of 70% based on transportation rates only, which was closest to TURN's recommendation. Further, PG&E proposed an additional 25% deaveraging of core rates during each year of the BCAP. In contrast, TURN recommended no more than 5% to 10% annual deaveraging, and ORA proposed 15% annual deaveraging. The settlement agreement deaveraged core rates by an additional 10% for the first year and up to an additional 15% (depending on future gas prices) for the second year.

6. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$24,352.05. As adjusted by the Commission,⁷ TURN's compensation request is for \$23,399.22, as follows:

⁷ We have corrected minor miscalculations by TURN in its request and have adjusted the hourly rate for attorney Florio as discussed below.

Attorneys' Fees

Michel Florio (2000/2001)	27.25 hrs. @ \$315	\$8,583.75
Marcel Hawiger (2000)	37.63 hrs. @ \$185 ⁸	<u>\$6,961.55</u>
Atty Fees Subtotal		\$15,545.30

Experts' Fees

William B. Marcus (2000)	20.50 hrs. @ \$160	\$3,280.00
Jeffrey Nahigian (2000)	27.75 hrs. @ \$100	\$2,775.00
Gregory Ruszovan (2000)	2.00 hrs. @ \$100	\$200.00
Gregory Ruszovan (1999)	11.70 hrs. @ \$95	<u>\$1,111.50⁹</u>
Consultant Fees Subtotal		\$7,366.50

Other Costs

Photocopying	\$394.20
Postage	\$53.19
Other Direct Expenses	<u>\$40.03</u>
Costs Subtotal	\$487.42

TOTAL: \$23,399.22

6.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits

⁸ TURN discounted the 8.75 hours that Hawiger spent on compensation issues by 50%, consistent with prior Commission decisions.

⁹ These 11.70 hours represent Ruszovan’s work related a workshop conducted by PG&E. The last BCAP required this workshop as a prerequisite to this application. We find it reasonable for TURN to seek compensation for those hours here.

realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Here, TURN's and ORA's recommendations for marginal cost calculations resulted in a larger proportion of the distribution revenue requirement being paid by commercial and industrial customers, rather than residential customers who may have less ability to pay these costs. This allocation resulted primarily from the negotiated outcome in the settlement agreement that reduced PG&E's proposed marginal costs by 65% of the difference between PG&E's proposal and TURN's and ORA's proposals. Moreover, the total core share of distribution and customer costs in the settlement agreement is \$6 million less than proposed in PG&E's application, and the residential customer class share is approximately \$25 million less. The residential class share of customer costs is approximately \$52.4 million less in the settlement agreement than proposed in PG&E's application.

TURN's participation in this proceeding did not duplicate the efforts of ORA. TURN's testimony provided additional data and analysis not provided by ORA and included significant comments only when necessary to amplify or independently support ORA's position.

All of these factors lead us to conclude that TURN's participation was productive, avoided unreasonable duplication with other parties, and yielded ratepayer benefits substantially in excess of the costs TURN incurred.

6.2 Hours Claimed

TURN submits time logs to document the hours claimed by its attorneys and professional consultants. The logs include a daily breakdown of hours for attorneys Florio and Hawiger and consultants Marcus, Nahigian, and

Ruszovan. We find that TURN has adequately and reasonably supported the 126.83 hours for which it claims compensation.

6.3 Hourly Rates

TURN requests hourly rates for Florio at \$350 for work performed in this proceeding. TURN states that its intervenor compensation request in A.00-11-038 asks for an increase in Florio's rate to \$350 for work performed during fiscal year July 1, 2000 through June 30, 2001, but TURN has not replicated the supporting documentation and argument here. The highest hourly rate that the Commission has authorized for Florio's work in 2000 is \$315.¹⁰ TURN's A.00-11-038 request, for an award of over half a million dollars, is still under review. Rather than delay a decision on this much smaller intervenor compensation request by asking TURN to supplement its showing in this proceeding, or by waiting until a decision issues in A.00-11-038, we will award Florio \$315 per hour for work performed during the 2000-2001 timeframe, as recently awarded in D.01-11-014.¹¹ This determination does not prejudice the issue raised in A.00-11-038. Thus, our total award will reflect an adjustment for attorney time to authorize 27.25 hours for Florio at \$315 per hour, for a total of \$8,583.75, or \$953.75 less than the amount requested.

TURN requests compensation for Hawiger at the hourly rate of \$185, which we previously adopted in D.01-03-042 and D.01-10-008.¹² We have also

¹⁰ D.00-04-031 at p. 7.

¹¹ TURN has agreed to accept an hourly rate of \$315 for Florio's work in this proceeding, rather than to await our compensation decision in A.00-11-038.

¹² Since Hawiger spent limited time on work related to this proceeding in 2001 and 2002, TURN has requested compensation at Hawiger's 2000 hourly rate.

previously approved TURN's requested hourly rates for Marcus and Nahigian of \$160 and \$100 respectively.¹³

TURN requests an hourly rate of \$100 for Ruzzovan for work performed in 2000. In prior decisions, we adopted an hourly rate of \$95 for Ruzzovan for work performed in 1999.¹⁴ We find that an increase of \$5 per hour for work performed in 2000 is reasonable in view of Ruzzovan's expertise, market rates, and awards made to other experts with comparable experience.

6.4 Other Costs

TURN's expenses include \$487.42 for photocopying, postage, and other direct expenses. TURN has included detailed supporting documentation. We find these expenses reasonable.

7. Award to TURN

We award TURN \$23,399.22 which includes correction of minor miscalculations by TURN and a minor adjustment for Florio's hourly rate, as discussed above. PG&E shall pay TURN \$23,399.22 for TURN's contribution to D.01-11-001. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate) measured from the 75th day after TURN's compensation request was filed.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records should identify specific

¹³ D.01-10-008.

¹⁴ D.00-10-020, D.00-10-014.

issues for which TURN requests compensation, the actual time spent by each employee, the applicable hourly rate and any other costs for which compensation may be claimed.

8. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.01-11-001.
2. TURN contributed substantially to D.01-11-001.
3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.
4. TURN has requested hourly rates in the amount of \$185 for Hawiger (for 2000 and 2001), \$160 for Marcus (for 2000 and 2001), \$100 for Nahigan (for 2000) and \$95 for Ruzsovan (for 1999), which have already been approved by the Commission. A 5% increase in the hourly rate for Ruzsovan from \$95 to \$100 for work performed in 2000 is reasonable based on Ruzsovan's expertise, market rates, and awards made to other experts with comparable experience.
5. We lack the support, in this proceeding, which would permit us to assess TURN's request that we establish a rate of \$350 per hour for Florio for 2000-2001. That support, filed with TURN's request for intervenor compensation in A.00-11-038, is still under review.
6. Under the circumstances, it is reasonable to award Florio \$315 per hour for work performed during 2000-2001, since this is the highest hourly rate we have previously approved for him. It would not be reasonable to delay a decision on

this intervenor compensation request by asking TURN to supplement its showing in this proceeding or by waiting until a decision issues in A.00-11-038.

7. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$23,399.22 for its contribution to D.01-11-001.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without unnecessary delay.
5. Our determination to award Florio \$315 per hour for work during 2000-2001, does not prejudice TURN's request in A.00-11-038 for an increase in his hourly rate to \$350 per hour.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$23,399.22 in compensation for its substantial contribution to Decision 01-11-001.
2. Pacific Gas and Electric Company (PG&E) shall pay TURN the award granted by Ordering Paragraph 1. Payment shall be made within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning with the 75th day after January 8, 2002, the date TURN's request was filed.
3. The comment period for today's decision is waived.

4. Application 00-04-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.